

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

- against -

DAVID A. ZWICK and
TERRENCE J. O'DONNELL,

Defendants.

03 Civ. 2742 (JGK)

ORDER

JOHN G. KOELTL, District Judge:

The Court has received the proposed final judgment from the Securities and Exchange Commissions ("SEC"). Defendant Zwick raises two objections to the proposed final judgment. First, Zwick objects to the disgorgement amount contained in the proposed final judgment, arguing that the SEC has increased the amount of disgorgement it is seeking against him after agreeing not to seek disgorgement from O'Donnell with respect to certain disputed trades. Zwick argues that even if O'Donnell did not receive a commission on a given trade, some trader at Suncoast did receive a commission, and the disgorgement amount should therefore be reduced by that amount, regardless of any agreement between the SEC and O'Donnell. However, as explained in the Court's Opinion and Order dated March 16, 2007 (the "3/16/07 Opinion"), Zwick has failed to produce sufficient evidence of the amount of the traders' commissions obtained on these trades.

On the other hand, as to O'Donnell, there is sufficient evidence of the amount of commissions that O'Donnell received on the various trades based on the evidence in the record and the stipulation between the SEC and O'Donnell as to the disputed trades that together constitute the disgorgement amount sought against O'Donnell. Therefore, for these reasons and the reasons explained in the 3/16/07 Opinion, the proposed final judgment correctly calculates the disgorgement amount against Zwick based on the commissions earned by O'Donnell but not the alleged commissions earned by other traders.

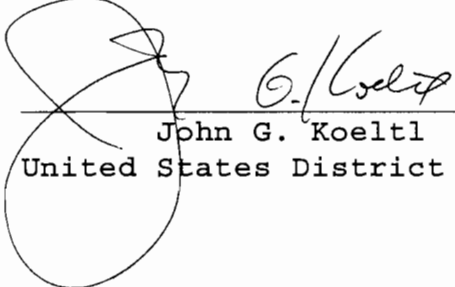
Second, Zwick seeks reconsideration of this Court's finding that certain payments that Suncoast allegedly made to Morgan Stanley on trades cleared through Morgan Stanley should not be reduced from Zwick's total disgorgement amount. In support of his argument, Zwick attaches for the first time various monthly statements from Morgan Stanley. These records offered for the first time in opposition to the proposed final judgment are not a basis for reconsidering the Court's prior order. Zwick offers no reason for the late proffer. In any event, Zwick has produced insufficient evidence detailing the manner in which these alleged payments to Morgan Stanley impacted the amount of income he received from the commissions. As such, the Court declines to reconsider its earlier finding that the payments

Suncoast allegedly made to Morgan Stanley should not be deducted from Zwick's total disgorgement amount.

The Court will sign the proposed final judgment.

SO ORDERED.

Dated: New York, New York
April 13, 2007



John G. Koeltl
United States District Judge